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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
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Letter dated 19 August 2004 from the Permanent Representative of New Zealand to the United Nations addressed to the Secretary-General

The Government of New Zealand has reviewed the many drafting suggestions that were made to the Ad Hoc Committee as contained in the compilation of proposed revisions and amendments provided in annex II of its report on its third session (A/AC.265/2004/5). After studying the various proposals, the Government of New Zealand has developed six general principles that will guide its approach to the subsequent negotiations; those general principles have been developed into a discussion paper which is enclosed with the present letter (see annex). I would be grateful if you could circulate the present letter and its annex as a document of the Ad Hoc Committee.

(*Signed*) Don **MacKay**

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Annex to the letter dated 19 August 2004 from the Permanent Representative of New Zealand to the United Nations addressed to the Secretary-General

COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES: GENERAL COMMENTS ON THE COMPILATION OF PROPOSED REVISIONS AND AMENDMENTS TO THE DRAFT TEXT

The New Zealand Government would like to bring the following discussion document to the attention of the Ad Hoc Committee. After reviewing the drafting proposals that were made to the Ad Hoc Committee at its third session, contained in the compilation of proposed revisions and amendments in Annex II of the report of the Third Session of the Ad Hoc Committee (A/AC.265/2004/5), the New Zealand Government has the following six general observations to make:

1) The level of detail and style of the draft Convention should mirror that of existing human rights treaties

1 The drafting proposals that were made to the Ad Hoc Committee vary widely in their level of specificity. Many of the amendments proposed are at the very detailed end of the spectrum, and are too specific for a human rights treaty. They reflect the sorts of commitments that are best put into national action plans to implement the Convention, or into a UN programme of action to implement agreed commitments. Such detailed guidelines already appear in the Standard Rules, and should they appear in the convention would duplicate that document. It should also be kept in mind that a treaty that is too detailed may not attract a large number of States Parties.

2 At the other end of the spectrum, the compilation of proposed revisions and amendments contains proposals for aspirational statements, which would be too vague to be enforceable. While they could appropriately be included in a high level political declaration, in a legally binding treaty they would not create any real obligations for States Parties.

3 The Ad Hoc Committee should strive to strike a balance between these points. The objective should be to agree to a draft Convention that contains clear legally binding obligations on states, but at a level of detail, style and language that is similar to existing human rights treaties.

2) The draft Convention should avoid redundancy and overlap

4 Given the shortage of time for reflection at the Working Group in January, many ideas were incorporated into the Working Group's draft text in more than one place. Many proposals were made at the third meeting of the Ad Hoc Committee that, if taken together, would create even more overlap and redundancy in the text. Ideas that repeatedly appear throughout the draft should instead be included in one of the general provisions at the beginning of the Convention, so that they apply through the text.

5 This principle should also apply to the proposals to deal with specific groups, such as women and children, in separate articles. The Draft Convention is at present divided thematically and it should be possible to include any provisions that relate to women and children, on health or education for example, under the relevant thematic Articles. Locating these provisions under separate Articles on women and children with disabilities risks duplication and internal inconsistency within the text of the Convention.

3) The draft Convention should reflect the existing doctrine of progressive realisation of economic, social and cultural rights

6 The existing body of human rights treaties has already developed a doctrine of "progressive realisation" of economic, social and cultural rights. That doctrine says that states parties shall implement those rights to the maximum extent of their available resources. Many of the proposals made at the third meeting of the Ad Hoc Committee seek to include qualifying language into individual articles, such as "within available resources", and "to the greatest extent possible". Providing that the draft Convention clearly incorporates this doctrine, consistent with existing human rights treaties, such qualifying language could be avoided in most cases.

7 The Convention on the Rights of the Child provides a good model: it sets out in an early general Article (Article 4) that the economic, social and cultural rights in that treaty shall be implemented "to the maximum extent of available resources". There would then be no need to qualify every Article that deals with economic, social and cultural rights. However, where substantive articles give rise to economic, cultural and social rights, language appropriate to those rights should be used consistency with other conventions. For example, articles 24 and 28 of the Convention on the Rights of the Child, which deal with health and education, use language appropriate to progressive rights.

4) The draft Convention should not extend the doctrine of progressive realisation to civil and political rights

8 At the third meeting of the Ad Hoc Committee, proposals were made to add qualifying language such as "to the greatest extent possible" to draft Articles on civil and political rights. This would extend the doctrine of progressive realisation, for the first time, to civil and political rights. Persons with disabilities are already guaranteed civil and political rights under existing human rights treaties, without those rights being subject to qualifications such as "available resources". The draft Convention should not incorporate such qualifications, because the result would be to weaken their civil and political rights, rather than strengthening them.

9 The Ad Hoc Committee's guiding principle should be that the draft Convention should neither create new or additional rights for persons with disabilities, nor diminish or remove existing ones. Rather, it should spell out how their existing rights, which are the same rights that apply to all people, can be better protected.

5) The draft Convention should be consistent with other core human rights treaties

10 Given the fact that the draft Convention seeks to elaborate steps that States Parties are obliged to take to better promote the existing rights of persons with disabilities, many parts of the draft are borrowed from existing core human rights treaties. In some places, where existing wording may be somewhat old-fashioned, it may need to be updated. There appears to be wide support, for example, for replacing the word "correspondence" in the Article on privacy with the word "communications".

11 For the most part, however, the Ad Hoc Committee should resist the temptation to modify language from existing human rights treaties as this may affect the accepted meaning or intent. While there are some small differences in wording between some of the treaties already, usually to reflect the target group of the Convention, many of the proposals that were made during the third meeting of the Ad Hoc Committee to amend the draft text contain significant variations from existing language. If they were to remain in the final text of the Convention, this would create confusion and inconsistency across the body of international human rights law. Attempts to "improve" provisions of existing treaties could create the unintended consequence that the rights of persons with disabilities would be different from the rights of other people. In some places this would be to their advantage, giving them better (or even new) rights, but in others it would mean they have less protection than the rest of humankind.

12 Having said that, however, maintaining consistency of language and style with existing human rights treaties is not the same as rejecting new and valid ideas. There would be little value in a Convention that went no further than existing international legal instruments in protecting the rights of persons with disabilities.

6) The draft Convention should focus on issues and rights that have particular relevance to disabled people

13 In drafting the Convention text and choosing which rights to elaborate, it is necessary to consider whether issues related to a right are of particular significance to disabled people. They may be significant, for example, because the right in question is not currently honoured for many disabled people, or because honouring it requires taking special measures for disabled people.

14 If there are no significant differences in promoting and protecting a particular right for persons with disabilities than for other people - then it may not be necessary to include text about that right in the Convention. Each Article in the draft text needs to be considered from this point of view and assessed whether it gives appropriate emphasis to issues of particular relevance to persons with disabilities. In order not to over-state issues that do not need elaboration, each Article should be focussed on its main purpose, and that purpose should be relevant to disabled people. Articles should not attempt to straddle too many issues, some of which may already be covered elsewhere in other Articles of the Convention, or in other core treaties.